

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Automatic and Manual Roaming) WT Docket No. 00-193
Obligations Pertaining to)
Commercial Mobile Radio Services)

To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Nextel Communications, Inc. ("Nextel") submits these Comments on the November 1, 2000 Notice of Proposed Rulemaking ("*Notice*") of the Federal Communications Commission ("Commission"). The *Notice* proposes to mandate automatic roaming among Commercial Mobile Radio Service ("CMRS") providers if "it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers." At its heart, the *Notice* is asking a single fundamental question: Has a market failure occurred in the CMRS industry that necessitates government intervention and reversal of the deregulatory policies mandated by the Omnibus Budget Reconciliation Act of 1993 and the Telecommunications Act of 1996? The answer to this question is a resounding no.

The Commission's deregulatory and pro-competitive CMRS policies have made possible intense and increasing competition among facilities-based CMRS providers in which carriers vie for spectrum and wireless customers in a manner that substantially benefits the public. As recently demonstrated by the Commission's Fifth Report on Competition in the CMRS industry, intense competition has resulted in the build out of extensive networks covering a large portion of the country's population, increased carrier options from two or three choices to as many as seven choices in some areas, an increase in the menu of service options from merely interconnected mobile telephone service to any number of options, including voicemail, Internet, short messaging and other data services, and a decrease of as much as a 20 percent in the price of those services. Wireless competition is thriving as a result of the Commission's deregulatory policies; nothing in the wireless industry justifies the *Notice's* proposed departure.

In this deregulatory, pro-competitive environment, all wireless carriers have an opportunity to bid for spectrum, construct their own networks and develop their own distinct products and services. The Commission should heed its own emphatic warning, expressed in its cellular resale decisions, that regulation creating an incentive to forego investment in spectrum, facilities and product innovation could undo much of the facilities-based competitive benefits of its deregulatory policies. An automatic roaming obligation easily could create such perverse incentives despite the availability of spectrum for facilities-based competition via Commission auctions and secondary market transactions. By relying on their ability to force roaming agreements, whether economic or not, carriers would merely rely on the spectrum, infrastructure and technology investments of others to duplicate already existing services rather than provide facilities-based competition.

This result disserves wireless consumers by eliminating real choice in the marketplace, particularly as the industry moves toward deployment of Third Generation ("3G") technologies. First, an automatic roaming mandate would encourage companies to forego real investment in 3G technologies and deploy instead a geographically and technically limited system that relies on the 3G networks of other carriers for providing a broader service. Second, carriers are making a variety of technology choices for the transition to 3G networks. The cost of complying with an automatic roaming requirement and the additional difficulties presented by interconnection between differing 3G technologies are likely to distract resources from the 3G transition and drive away investment. The proposed mandate, therefore, would be directly contrary to the public interest, given the current state of the marketplace, and risks placing the U.S. far behind other countries in deploying 3G services.

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² The Commission recently terminated the 1996 proceeding, concluding that the record was stale. Second Report and Order and Third Notice Of Proposed Rulemaking, 11 FCC Rcd 9462 (1996) (“Second Report and Order”); Third Report and Order and Memorandum Opinion and Order on Reconsideration, FCC 00-251, released August 28, 2000 (“Docket Termination Order”).

reversal of the deregulatory policies mandated by the Omnibus Budget Reconciliation Act of 1993 ("1993 Budget Act") and the Telecommunications Act of 1996 ("1996 Act")?³ The answer to this question is a resounding no. The Commission's deregulatory and pro-competitive policies for the CMRS industry have made possible intense and increasing competition among facilities-based CMRS providers. These policies have encouraged carriers to vie for spectrum and for customers in a manner that substantially benefits the public. The automatic roaming requirements proposed in the *Notice* would disserve the public, as described below.

In a largely deregulated market, each CMRS provider has had to make difficult and competitively significant choices about the extent of its system coverage, the services it will provide and how they will be priced, and each has had to live with the consequences of those choices. Intense competition for customers has required carriers to develop and exploit areas of specialization and to distinguish their service offerings in a manner that provides consumers with a range of wireless service choices.

Nextel, one of the Nation's leading providers of mobile telephone services, has responded dynamically to changes in the market to provide competitively desirable services to its customers. Nextel currently provides its unique combination of cellular telephone, Direct Connect[®], paging, short messaging and wireless internet services to some six million subscribers nationwide,⁴ having

³ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ Founded in the late 1980s, Nextel has constructed a near-nationwide network that includes approximately 12,000 cell sites covering more than 400 cities nationwide. Nextel employs nearly 15,000 people and provides a range of services that compete with other

established its geographic coverage by acquiring spectrum via Commission auctions and by successfully negotiating a range of mutually beneficial business arrangements with existing licensees. Nextel recognized early on that its best chance for success was to offer services superior to those provided by the then cellular duopoly, and it invested significant time and resources into deploying an advanced, wide-area digital mobile network.⁵

The competitiveness of the wireless marketplace continues to increase, and the introduction of Third Generation ("3G") services will only intensify the competition domestically and globally. Therefore, at this juncture in the development of the CMRS market, nothing short of a conclusive demonstration of a market failure that harms consumers justifies adopting a regulation that would adversely affect the vibrant competition that characterizes the CMRS market today.

Additionally, the current move to 3G technologies could be hampered by the imposition of an automatic roaming mandate – a result wholly at odds with the competitive atmosphere in the global wireless marketplace. First, mandating roaming agreements, without regard for the economics of the transaction, could encourage companies to forego real investment in 3G technologies, knowing they

cellular and Personal Communications Services ("PCS") providers. Nextel provides its CMRS offering using primarily 800 MHz Specialized Mobile Radio ("SMR") frequencies. Thus, Nextel often is referred to as an "SMR provider" or "wide-area SMR provider," although its services compete directly with and are regulated virtually identically to those of cellular and PCS providers.

⁵ For example, Nextel has worked closely with Motorola to achieve the high-quality iDEN products and services Nextel makes available to its customers today. In 1996, Nextel launched Motorola's 3:1 iDEN technology, which provides three talk paths for interconnect operations, and essentially replaced the 6:1 iDEN technology it previously had sold. This 3:1 iDEN product currently is sold and marketed by Nextel in all of its markets. In contrast, the Southern Company ("Southern"), another provider of iDEN services in the U.S., uses the older Motorola 6:1 iDEN platform. This poses technical obstacles to providing roaming services to Nextel's subscribers using a 3:1 iDEN handset since 3:1 handsets cannot operate on a 6:1 network.

could deploy a geographically and technically limited 3G system and then rely on other 3G carriers for providing a broader service. The Commission would not advance the public interest by creating such marketplace disincentives to invest and commit to 3G technologies. Second, carriers are making a variety of technology choices for the transition to 3G networks. The cost of complying with an automatic roaming requirement and the additional difficulties presented by interconnection between differing 3G technologies are likely to distract resources from the 3G transition and drive away investment. This result would be directly contrary to the public interest and put the United States far behind other countries in the deployment of 3G services, with critical adverse impact on the Nation's commercial growth.

The evidence weighing against imposing an automatic roaming rule is stronger now than it was in the cellular duopoly days of the late 1980s, when the Commission declined to impose any automatic roaming obligation. Today's CMRS marketplace is markedly more competitive, and consumers are far better off than in the 1980s or even in 1996, when the Commission initially considered an automatic roaming mandate. If the public interest did not require an automatic roaming mandate when there were only two facilities-based providers in each market, it is difficult to imagine any justification for mandated automatic roaming in a market with as many as five or more facilities-based providers.⁶

⁶ According to the Fifth Report on Competition, 69% of the population has five or more choices, and four percent has as many as seven facilities-based service provider choices in their markets. Fifth Report on Competition, FCC 00-289, released August 18, 2000 ("Fifth Report on Competition") at p. 5.

In short, there is no evidence of a market failure to justify a CMRS automatic roaming requirement. The Commission should continue to adhere to the mandates of the 1993 Budget Act and the 1996 Act directing it to replace regulation with facilities-based competition. In this instance, reversing the Commission's highly successful deregulatory policies in the thriving CMRS arena is unthinkable.

I. The FCC Should Continue to Adhere to the Mandate of the 1993 Budget Act and the 1996 Act to Deregulate and Encourage Facilities-Based Competition

An automatic roaming obligation is wholly at odds with the Commission's current deregulatory policies and the realities of today's competitive CMRS marketplace. The Commission's move to deregulate the CMRS marketplace began with its implementation of the 1993 Budget Act. In the 1993 Budget Act, Congress made two significant changes to the wireless marketplace. First, it created the CMRS service classification to encompass all similarly situated mobile services and subject them to a consistent regulatory framework so that the marketplace – rather than disparate regulatory burdens – would determine future market structure and the industry's winners and losers.⁷ Second, as the Commission recently noted, "[the 1993 Budget Act] established the promotion of competition as a fundamental goal for CMRS policy formation and regulation."⁸

Congress next passed the 1996 Act to mandate deregulation of the broader telecommunications marketplace and, where possible, reliance on facilities-based competition to replace regulation as the means to protect consumers. In both of these Acts, and in the Commission's implementation thereof, Congress and the

⁷ See Third Report and Order, 9 FCC Rcd 7988 (1994) at para. 4 ("The broad goal of this action is to ensure that economic forces – not disparate regulatory burdens – shape the development of the CMRS marketplace.")

⁸ Fifth Report on Competition at p. 3.

Commission recognized that a competitive marketplace can more effectively and efficiently promote aggressive competition, lower prices, enhance choices and protect consumers. As the Commission's recent Fifth Report on Competition demonstrated, no telecommunications market segment demonstrates the success of this deregulatory policy more vividly than today's CMRS market.⁹

The Commission has recognized in the similar context of the cellular resale obligation that CMRS facilities-based competition eliminates the need for government intervention to protect consumers and that regulation actually may stunt facilities-based competition.¹⁰ In the early days of the cellular duopoly regime, the Commission imposed a cellular resale requirement to allow the typically later-to-market non-wireline carrier to resell the first-to-market wireline carrier's services until the non-wireline system could be constructed. The Commission later recognized, however, that the mandatory resale requirement could work at cross-purpose with the Commission's goal to promote facilities-based competition because competing cellular providers could invoke the resale requirement to avoid the risk and investment in constructing their own facilities, instead relying upon their competitor's infrastructure investment.¹¹ The Commission stressed that

⁹ See *generally* Fifth Report on Competition.

¹⁰ See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, First Report and Order, 11 FCC Rcd 18445, para. 30 (1996), affirmed, Cellnet Communs. v. FCC, 149 F.3d 429 (6th Cir. 1998).

¹¹ This reflects the fact that the resale requirement initially was needed only because the Commission's licensing rules required a substantially longer time period to license the competing applications of non-wireline cellular providers. Resale of the wireline licensee's services provided the non-wireline licensee the ability to establish brand recognition while undertaking buildout that would not begin until months (or even years) after the wireline cellular carrier had deployed service. Thus, resale was intended to mitigate the regulatorily created "headstart" for wireline cellular carriers. Once that was overcome and both licensees had established a facilities-based presence in the market, the Commission realized

“relying on a competitor’s facilities should not be encouraged or protected.”¹²

Thus, in 1992, the Commission eliminated the resale obligation on cellular providers in the same market “after both carriers are fully operational.”¹³ The Commission observed that deregulation would “expedite expansion of both licensees’ coverage areas, and spur the deployment of spectrum-efficient technology.”¹⁴

Applying the same reasoning, the Commission later held that the application of the resale rule to cellular, broadband PCS and covered SMR providers would terminate five years after the last group of initial licenses for allocated broadband PCS spectrum was awarded.¹⁵ In so holding, the Commission explained that the “competitive development of broadband PCS service . . . obviate[d] the need for a resale rule in the cellular and broadband PCS market sector.”¹⁶ The Commission’s cellular resale decisions reflect its consistent adherence to the mandate of the 1993 Budget Act and the 1996 Act to eliminate regulation in favor of encouraging facilities-based competition.

that the rule created disincentives to deploy the infrastructure necessary to provide service. The automatic roaming proposal creates the same incentives, and therefore should not be adopted.

¹² Petitions for Rule Making Concerning Proposed Changes to the Commission’s Cellular Resale Policies, *Notice of Proposed Rulemaking and Order*, 6 FCC Rcd 1719, ¶ 18 (1991).

¹³ Petitions for Rule Making Concerning Proposed Changes to the Commission’s Cellular Resale Policies, *Report and Order*, 7 FCC Rcd 4006, ¶ 7 (1992).

¹⁴ *Id.*

¹⁵ See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *First Report and Order*, 11 FCC Rcd 18455, ¶ 24 (1996), *affirmed*, *Cellnet Communs. v. FCC*, 149 F.3d 429 (6th Cir. 1998).

¹⁶ *Id.* In making this determination, the FCC stated that its “rules require broadband PCS licensees to significantly build out their networks within five years of being licensed. Thus, within five years after the D, E, and F block broadband PCS licenses are awarded, it is reasonable to anticipate that there will be up to six facilities-based broadband PCS carriers, as well as potentially one or more covered SMR providers, competing with two cellular licensees in every geographic area.” *Id.*

The Commission faces the same public interest concerns and therefore should follow the same analytical approach in analyzing the need for an automatic roaming requirement. As in the cellular resale proceedings, the Commission must determine whether there exists a dominant carrier(s) in the CMRS marketplace and a consequent market failure that necessitates government intervention to require the dominant carrier(s) to allow its competitors to ride on its network rather than building out their own facilities. Pursuant to the deregulatory mandate of the 1993 Budget Act and the 1996 Act, absent a finding of market failure – clearly unsupported in the thriving CMRS marketplace -- there is no justification for the Commission to impose an automatic roaming requirement that inevitably would drag it into a quagmire of regulation of rates, terms and conditions of automatic roaming.

Moreover, where, as here, competitors all had an opportunity to bid for spectrum and construct their own networks, the Commission should heed the emphatic warning of the cellular resale decisions that such regulation is more likely to create a disincentive for carriers to invest in facilities build out, development of spectrum-efficient technology, and price and product innovation – thereby undoing much of the facilities-based competitive benefits of the Commission’s deregulatory policies. Longer-term robust wireless competition requires facilities-based competitors, not just regulatorily prescribed service alternatives.

II. Consumers Have Been the Beneficiaries of CMRS Deregulation, Enjoying Increasingly Lower Prices and Greater Choices

As noted above, the Commission implemented the 1993 Budget Act in a manner that relies on facilities-based competition rather than on regulatory intervention to protect consumers. Since the Commission adopted these pro-

competitive policies, the CMRS marketplace has developed into one of the Nation's most fiercely competitive telecommunications sectors, and it is the wireless consumer who has experienced the greatest benefit of these policies. As the Commission recently stated, "[i]n the year 2000, the CMRS industry continue[d] to benefit from the effects of increased competition as evidenced by lower prices to consumers and increased diversity of service offerings. . ."¹⁷ Prices for CMRS services fell during 1999 by as much as 20 percent, and 1999 saw continued nationwide system buildout by carriers, the deployment of networks "in an increasing number of markets, expan[sion] [of] digital footprints, and develop[ment] [of] innovative pricing plans."¹⁸

"In the five years since the Commission first granted the A and B block broadband PCS licenses [*i.e.*, the time at which the Commission first sought comment on an automatic roaming obligation], non-cellular carriers have built extensive networks covering a large portion of the country's population."¹⁹ Consumers have experienced an increase in their service provider options from two or three choices to as many as seven choices in some areas. Consumers also have seen their menu of service options increase from merely interconnected mobile telephone service to any number of options, including voicemail, Internet, short messaging and other data services. All of these benefits resulted from the Commission-driven incentive for carriers to obtain spectrum, build out networks, put the spectrum to its highest and best use by designing creative and innovative

¹⁷ Fifth Report on Competition at p. 4.

¹⁸ *Id.* at p. 5.

¹⁹ *Id.* at p. 18.

products and services, and introduce unique pricing plans to differentiate their services from those of their competitors.

Since its inception, Nextel has invested significant resources to create a competitive service offering that provides consumers a unique menu of wireless services. Nextel has rapidly deployed its network throughout much of the Nation by investing in infrastructure, partnering with other entities and, where in the best interests of Nextel's customers, entering into mutually beneficial roaming arrangements; *i.e.*, arrangements that make business sense to all parties and thereby benefit the customers of all carrier participants.²⁰ Nextel, like many other wireless companies, has committed to compete in the CMRS marketplace by investing in the resources necessary to provide consumers superior wireless services from the standpoint of service coverage, service functionality and price.

Consumers have choices provided by significant competition in the marketplace, and are experiencing more and more affordable pricing while service options increase. Among the range of service options provided to consumers is subscription to a regional CMRS service that does not offer nationwide roaming capability. Because a regional CMRS carrier does not have to bear the costs and

²⁰ For example, to facilitate rapid deployment of its network throughout suburban, tertiary and rural areas of the country and move toward more ubiquitous nationwide service, Nextel entered into an agreement with Nextel Partners, Inc. ("Partners") to construct iDEN coverage using Commission-licensed frequencies disaggregated by Nextel to Partners, and offering its services to the public under the Nextel brand according to strict service quality standards. To accomplish seamless service for Nextel's and Partner's customers, the companies entered into an agreement to permit their customers to roam on one another's system. Nextel also has entered into roaming agreements with affiliates in Canada and Mexico, both of which also offer services using Motorola's 3:1 iDEN technology. Additionally, to enhance Nextel's competitiveness throughout the world, Nextel launched its i2000 iDEN phone – a mobile handset with dual-mode iDEN-GSM 900 capability that can operate on hundreds of GSM systems throughout the world. Nextel has entered into roaming agreements with over 125 technically compatible GSM systems worldwide to provide its i2000 customers an additional advantage in subscribing to Nextel's services.

risks of acquiring spectrum and constructing a nationwide network, it can offer lower rates to consumers who do not require nationwide roaming capability.²¹ Southern, for example, has attracted some 200,000 subscribers despite its limited service territory. Additionally, Leap Wireless International ("Leap") has begun offering wireless services specifically designed as a local service alternative to the wireline Local Exchange Carrier. In Chattanooga, Tennessee, for example, 61 % of Leap's customers claim that Leap's service is their primary phone.²² Carriers thus can make the business decision to forego spectrum acquisition and be niche regional service providers offering an alternative choice for consumers.

The Commission's own findings regarding the CMRS market establish the existence of flourishing competition to protect consumers and eliminate the need for government regulation. As the Commission stated in the *Notice*, it should not adopt an automatic roaming rule "unless it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers."²³ Nothing about the CMRS marketplace and the increasing competition therein requires Commission intervention to protect consumers who currently have five or more facilities-based service alternatives. There is no dominant carrier(s) in the CMRS marketplace, there is no lack of competition, and

²¹ In those limited situations where one carrier, with a coverage area limited by its own business decision not to take the risk of acquiring spectrum and expanding its system, seeks to offer "national service" on a competitor's network without any corresponding investment, there is neither a marketplace incentive to enter into that transaction nor a marketplace failure for the Commission to address. Such carriers seek to obtain a commercial advantage through regulation rather than investment and innovation. Thus, success or failure of a regional service provider is a marketplace decision; the Commission's statutory mandate is to protect competition, not to protect competitors from the marketplace consequences of their business decisions.

²² See Fifth Report on Competition at p. 14.

²³ *Notice* at para. 18.

there is no marketplace failure to necessitate another layer of regulation in the form of an automatic roaming requirement.²⁴

III. An Automatic Roaming Mandate Discourages Investment in Infrastructure to Create and Deploy Distinctive Products and Services

The Commission has found that expansive system footprints are in the public interest because they “can achieve economies of scale and increased efficiencies compared to operators with smaller footprints.”²⁵ A decision to mandate automatic roaming would discourage the future creation of such expansive footprints by providing companies a regulatorily derived alternative to making an investment in the marketplace. For example, a licensee, otherwise required to acquire spectrum, build its own infrastructure and deploy its own distinct products and services, could choose to build a limited system and then roam onto the nationwide network of another carrier or carrier(s). Such a business plan is little more than resale – an obligation that the Commission already has subjected to sunset.

Nextel, for example, changed its business plans as necessary to respond to marketplace demands. Although its service footprint now covers more than 70% of the United States population, Nextel initially was conceived as a provider of digital dispatch services (combined with a cellular telephone offering) in only six major markets.²⁶ However, in implementing its business plans, Nextel realized that a

²⁴ In the *Notice*, the Commission queries whether certain subsets within the CMRS marketplace should be subject to an automatic roaming obligation. *Notice* at para. 18. Because all CMRS licensees compete with one another, regardless of the spectrum on which they are providing service (*i.e.*, cellular, PCS, SMR), and because the 1993 Budget Act mandated similar regulation of all CMRS licensees, the Commission should not impose an automatic roaming obligation on a limited set of CMRS providers. This would be contrary to the congressional mandate to achieve regulatory parity within the CMRS industry.

²⁵ Fifth Report on Competition at p. 10.

²⁶ See *Fleet Call, Inc.*, 6 FCC Rcd 1533 (1991).

broader-based nationwide or near-nationwide footprint would enhance its competitiveness and provide consumers a much-desired ubiquitous service at lower rates. Thus, Nextel -- at the time a small entrepreneurial company -- began acquiring spectrum via private business negotiations and Commission auctions. Nextel has invested billions of dollars in acquiring the spectrum necessary to provide its unique services to the public. At the same time, Nextel has invested more than \$7 billion to construct and deploy the iDEN network on which it provides its wireless services to the public.

Nextel has, to a large extent, carved out a niche in the CMRS industry by focusing its sales efforts on businesses and fleets of users. As the Commission has recognized, "Nextel has combined various billing features, a near-nationwide footprint, and handsets that can be used for both interconnected service as well as traditional dispatch services (marketed as "Direct Connect [®]") to create an offering targeted to business users."²⁷ This business-oriented approach, coupled with what Nextel believes is a superior mobile services product, resulted in Nextel's being the second-fastest growing wireless company in the U.S. in 1999.²⁸

An automatic roaming obligation easily could create perverse incentives for companies to avoid the high cost of acquiring spectrum -- an asset that has been and continues to be available via several Commission auctions, as well as through secondary marketplace transactions.²⁹ With the knowledge that they could rely on

²⁷ Fifth Report on Competition at p. 30.

²⁸ *Id.*

²⁹ The Commission is actively seeking ways to further its spectrum policies via secondary marketplace transactions -- an action that is entirely consistent with the Commission's deregulatory approach. See Promoting Efficient Use of Spectrum Through Elimination of

the investment of others by forcing a competitor to roam with them, Commission licensees could forego real investment and technological advancement, and rely instead on the infrastructure, spectrum and technology investments of their competitors.³⁰ By relying on the ability to force roaming agreements, other carriers would not be creating new products and services, but merely duplicating already existing services. As a result, consumers will experience competition that is simply "more of the same" rather than real choices among varying product and service alternatives. This disserves the wireless consumer by eliminating real choice in the marketplace. Furthermore, the Commission would not advance the public interest by expanding into the business of regulating the terms and rates of wireless roaming arrangements.

IV. Conclusion

The Commission has created a regulatory environment for the wireless industry in which competition has flourished and consumers have benefited immensely. With numerous choices, falling prices, improved services and state-of-

Barriers to the Development of Secondary Markets, Notice of Proposed Rulemaking, FCC 00-402, released November 27, 2000.

³⁰ For example, Southern – a multi-billion dollar company by any measure and the 153rd member of the Fortune 500 – has made a conscious business decision to forego spectrum acquisition that would be required to provide its customers a nationwide or near-nationwide service. Instead, Southern is betting on the Commission to impose an automatic roaming mandate so that it can realize its ambition to become a wide-area operator by leveraging off of other carriers' infrastructure. If the Commission were to impose such an obligation, it will discourage Southern and similarly situated companies from investing in spectrum and infrastructure to expand their networks and in technological improvements to distinguish their services from those of other CMRS carriers. The Commission's mission is to protect competition; not competitors. *See generally* 47 U.S.C.A. Sec. 151 (1996) (prefacing the 1996 Telecommunications Act as an Act "to promote competition. . ."); *see also* FCC v. Sanders Brothers Radio Station, 309 U.S. 470, 475 (1940) (holding that "plainly it is not the purpose of the Act to protect a licensee against competition but to protect the public"); *See also* FCC v. RCA Communications, Inc., 346 U.S. 86 (1953)(explaining that the Commission may find that competition serves the public interest better than protection of competitors).

the-art technological advances, there is no marketplace failure in the CMRS industry that justifies the regulatory intervention proposed in the *Notice*. The marketplace is not only sufficiently protecting consumers and providing services that are in the public interest, but the CMRS market is becoming increasingly more competitive every year. Because there is no marketplace justification for an automatic roaming obligation, the Commission should not impose this new regulatory mandate on the CMRS industry generally or on any subset of CMRS providers.

Respectfully submitted,

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January 5, 2001

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I, Rochelle L. Pearson, hereby certify that on this 5th day of January 2001, caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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